[¶ 79] As discussed above, CWI believes that the creation of a set of national rules for the implementation of Section 251 is essential to the development of competition.[31] The '96 Act charges the FCC with creating such rules and should, at the very least, establish a minimum list of elements that ILECs must make available on an unbundled basis. With this foundation of generally applicable minimum requirements, state commissions would have full flexibility to prescribe additional rules of unbundling tailored to the particular circumstances before them.

D. Elements to Be Unbundled [¶¶ 41, 77, 83, 86-116]

[¶ 77] CWI supports the Commission's conclusion that it must prescribe a minimum number of network elements which ILECs must make available immediately on an unbundled basis.[32] It is critically important, however, that new entrants, such as CWI, be free to request additional unbundled elements from ILECs in the future. These additional elements should be added to the list of those available on an unbundled basis if they meet the technical feasibility test described below. Thus, the Commission should make clear that, as networks evolve and technology advances, additional elements must be unbundled.

[¶ 83] CWI agrees with the Commission's flexible interpretation of "network element."[33] The network consists of functional elements that can be put together in different combinations, by different providers, to enable the provision of a wide array of

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[31] *Id.* § 251.

[32] *Notice* at ¶ 77.

[33] *Id.* ¶ 83.

services. Elements are the facilities and equipment in the network that contain the features, functions, and capabilities needed to provide these services. Each of these elements can be supplied individually to be utilized in conjunction with the facilities of other providers to piece out a local network. Thus, the Commission's flexible interpretation of network element is consistent with Congress' intention that the '96 Act be implemented in a forward-looking way capable of adapting to the needs of technological innovation.

[¶¶ 87, 92-116] Consistent with this analysis, CWI submits the following proposed list as a minimum foundational set of network elements that must be unbundled:

- loop distribution;
- loop concentrator;
- loop feeder;
- end office switch;
- tandem switch;
- operator system/directory assistance;
- dedicated transport;
- common transport
- tandem switch;
- link;
- signal transfer point;
- service control point; and
- AIN.

This list of unbundled elements is consistent with the '96 Act's intent to provide new entrants with the ability to compete on a facilities-based or resale (or any combination thereof) basis.

[¶ 87] CWI believes that it is essential to the development of competition that the Commission establish guidelines for adding elements to the list of those available on an unbundled basis. Accordingly, CWI submits that the Commission should establish a definition of technical feasibility to guide negotiating parties and state commissions. To be consistent with the '96 Act's core policy objective of eliminating impediments to competition, such a definition should incorporate the standard that if the basic technology exists today, or will be available within a one year period to implement the specific unbundling under consideration, it must be considered technically feasible, even if such unbundling has never before been provided. Moreover, determinations of technical feasibility should not be made on the basis of whether a particular ILEC possesses such technology at the time a request for unbundled access is made. Rather, such determinations should be made solely on the *availability* of equipment to make such unbundling technically feasible. Similarly, if sufficient technology is available to implement the unbundling request, the Commission should require the ILEC to develop any implementation processes necessary to provision and bill for the unbundled element. As with the actual technology necessary to implement unbundling requests, implementation processes and other business processes specific to the unbundled environment need not be in place for a finding of technical feasibility, as these, in many cases, will not exist in the current bundled environment.

[¶¶ 86-92] CWI agrees with the Commission's conclusion that ILECs should have the burden of proving that it is not technically feasible to provide access to a particular element.[34] Current or past unbundling of a particular network element by any ILEC (for any carrier) evidences the technical feasibility of providing the same or a similar element on an unbundled basis in that and any other similarly structured ILEC network.[35] Any justification relied upon by an ILEC to deny a request for unbundled access as infeasible should be provided to the requesting party *in writing* within 30 days of a *bona fide* request.

[¶ 88] Further, the factors stated in Section 251(d)(2) only infrequently should be invoked to deny an interconnection request.[36] As indicated in the *Notice*, the overall statutory scheme "enables entrants to use interconnection, unbundled elements, and/or resale in the manner *that the entran determines* will advance its entry strategy most effectively."[37]

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[34] *Id.* ¶ 87.

[35] *Id.*

[36] Section 251(d)(2) provides that:

> ACCESS STANDARDS. – In determining what network elements should be made available for purposes of subsection (c)(3), the Commission shall consider, at a minimum, whether –
>
> (A) access to such network elements as are proprietary in nature is necessary; and
>
> (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

47 U.S.C. § 251(d)(2).

[37] *Notice* at ¶ 15 (emphasis added).

Thus, the limitations of Section 251(d)(2) should not be used to substitute the Commission's or the ILEC's judgment for that of the requesting carrier's in determining whether the requested access is unnecessary or whether failure to provide it would impair the ability of the entrant to compete.[38] At a minimum, an ILEC refusing access should bear a heavy burden to satisfy the provisions of Section 251(d)(2).[39]

[¶ 41] CWI submits that, to ensure national uniformity, the Commission's Section 208 formal complaint process should be used to enforce the unbundling requirements of Section 251(c)(3).[40] As recognized in the *Notice*, Congress did not intend to limit the effect of the '96 Act to the technology and network designs of today.[41] Hence, the Commission should establish procedural rules by which it can expeditiously resolve any disputes arising as a result of an ILEC's refusal of a request to add a new element to the list of those available individually. The Commission, however, should institute timelines which require the parties to move expeditiously through the Section 208 formal complaint process.[42] Thus, CWI submits that the Commission should adopt a rule to require that complaints be adjudicated

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[38] 47 U.S.C. § 251(d)(2).

[39] *Id.* Moreover, the guidelines and standards established pursuant to Sections 255 and 256, with which ILECs must comply under Section 251(a), should minimize ILECs' claims that certain network elements to which entrants request access are proprietary. 47 U.S.C. §§ 251(a), 255, 256.

[40] 47 U.S.C. § 208, 47 U.S.C. § 251(c)(3).

[41] *See Notice* at ¶ 26.

[42] 47 U.S.C. § 208.

within six months from the date the complaint is filed. Parties should be allowed to suspend this six-month time-frame in order to attempt a settlement.

E. Unbundling of AIN [¶¶ 107-09, 112-14]

[¶¶ 107-08] CWI believes that the availability of nondiscriminatory unbundled elements will create important and exciting new opportunities for *all* telecommunications carriers, not solely the largest carriers in the marketplace. For example, CWI believes that access to Advanced Intelligent Networks ("AIN") capabilities on an unbundled basis will provide the company with critical information necessary to develop new and innovative service offerings. AIN capabilities consist of the Service Management System ("SMS") database, which supports call processing applications, and the necessary signaling required to access the database. The SMS database stores and forwards call processing directions through a non-SS7 interface in non-real-time. The Signal Switching Point ("SSP") generates real-time SS7 queries to the Signal Control Point ("SCP") based upon specific points in the call being processed on the SSP. The SCP replies with SS7 response messages that contain the next steps needed by the SSP to process the call.

[¶ 112] While the largest carriers may be able to design and build their own AIN technology, smaller carriers may not be able to afford the capital outlay required for this functionality. However, access to ILECs' existing AIN capabilities — including the SMS database, all SS7 links and SCPs — will allow carriers such as CWI to bring new products to the marketplace efficiently and quickly. Access to an ILEC's SMS would permit CWI to create its own service logic using a Service Creation Environment ("SCE") because the SCE

sends the service logic directly to the ILEC's SMS, thereby eliminating the need for CWI to recreate all of the AIN elements.

[¶ 112] Consistent with the unbundling principles advocated above, CWI believes that an ILEC should be required to provide requesting carriers with the same access to AIN capabilities as it makes available to itself. However, many ILECs contend that unmediated access to the SMS and SCPs is not possible in the current technical environment. These ILECs argue that network integrity issues prohibit unfiltered access to AIN capabilities. In effect, the ILECs contend that only they should be privileged to connect directly to the SMS, not because interconnection with other carriers is infeasible, but because other carriers cannot be trusted to protect network integrity. However, mediated access to AIN functions, which is an inferior form of access that the ILECs favor for others, adds significant delays to call set-up time and will force competitors to incur additional expenses not faced by the ILECs.

[¶ 112] CWI opposes adoption of this mediated approach and believes that industry bodies such as the Information Industry Liaison Committee Task Force on Long Term Unbundling can easily set up standards which permit unmediated access by ensuring that providers utilize appropriate interfaces. Thus, unsubstantiated "network integrity" arguments must be rejected. Indeed, AT&T used analogous arguments more than 25 years ago in the *Carterfone* case.[43] There, AT&T unsuccessfully argued that the use of non-Bell System equipment could result in malfunctions in the telephone network. As history has demonstrated, however, the industry effectively worked together to develop and maintain

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[43] *Use of the Carterfone Device in Message Toll Telephone Service*, 13 FCC 2d 420 (1968) (*"Carterfone"*), *recon. denied*, 14 FCC 2d 571 (1968).

adequate standards to ensure network integrity. Of course, similarly effective standards can be developed to provide for unbundled AIN functionality.

[¶ 113] Therefore, CWI believes that unmediated access to AIN must be allowed. If necessary, a short transitional period of mediated access could be established to allow time for the adoption of standards to ensure network integrity. However, during this interim period, CWI only would be willing to accept mediated access to AIN functionalities so long as the ILEC itself accepts the same mediated access. Such a requirement would prevent discrimination and motivate ILECs to move quickly in industry forums to develop the standards necessary to allow all carriers to enjoy unmediated access to the AIN functions. Accordingly, the Commission should set an absolute time-frame of one year for resolving the mediation issue.

[¶ 109] In the *Notice*, the Commission recognizes several states' provisions requiring unbundled access to AIN functionalities.[44] As the Commission notes, however, these state orders are not completely consistent. CWI agrees with the approach taken in Louisiana, which requires the ILECs to provide access to any and all databases that the ILEC provides to itself, provided, of course, that such access is in compliance with the requirements contained in Section 251(c)(3). Inconsistent state policies, such as those discussed by the Commission in the *Notice* at paragraph 109, lend even greater support to the notion that the Commission must adopt a uniform set of rules concerning unbundled network elements.

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[44] *Notice* at ¶ 109.

[¶ 114] Finally, CWI believes that a decision to unbundle AIN functionalities, pursuant to Section 251(c)(3) [45] would satisfy the objectives of the Commission's ongoing *Intelligent Networks* (*"IN"*) proceeding.[46] However, CWI cautions the Commission to reject the LECs' current two-year plan. A two year time period is neither consistent with the goals of the '96 Act, which seeks to open the local exchange markets immediately, nor is it necessary to ensure network integrity. For the reasons discussed above, CWI believes that the ILECs should provide mediated access to AIN capabilities immediately and that the Commission should establish a one-year period which would provide more than ample time to develop safeguards for unmediated access to all AIN functionalities.

F. Restrictions on Purchasing Unbundled Elements [¶¶ 85-86]

[¶ 85] Merely identifying the elements to be unbundled, however, will not guarantee nondiscriminatory access to those elements in a manner that allows requesting carriers to combine them to provide telecommunications services as required by Section 251(c)(3).[47] To facilitate the development of local competition, requesting carriers must be able to select only the elements desired for particular service offerings. Competitors should be free to select and combine elements from different carriers or, pursuant to Section 251(c)(3), they should be able to combine any and all elements purchased from the ILEC to provide a

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[45] 47 U.S.C. § 251(c)(3).

[46] *Intelligent Networks*, Notice of Inquiry, 6 FCC Rcd 7562 (1991); *Intelligent Networks*, Notice of Proposed Rulemaking, 8 FCC Rcd 1364 (1993).

[47] 47 U.S.C. § 251(c)(3).

particular telecommunications service.[48] There is no indication from the statute that Congress intended to prohibit requesting carriers from purchasing unbundled elements and putting them together to make a particular service offering. Rather, a *clear* reading of the statute indicates that Congress intended precisely this outcome.[49] Any suggestion that carriers who seek to configure a local network entirely from ILEC unbundled network elements must instead obtain service under the ILEC resale option directly conflicts with both the language and intent of the '96 Act.

[¶ 86] Further, CWI agrees with the Commission's conclusion that Section 251(c)(3) requires ILECs to provide requesting carriers with the ability to obtain a particular element's functionality for a fee and that there must be a separate charge for each purchased element.[50] The bundling of elements into packages is the antithesis of "network unbundling."

G. Interconnection and Unbundled Elements Must Be Made Available to All Telecommunications Carriers [¶¶ 159-65]

[¶ 163] Section 251(c)(3) provides that ILECs have "the duty to provide to *any requesting telecommunications carrier* for the *provision of a telecommunications service*,

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[48] *Id.*

[49] Although a competing carrier that purchases an unbundled element from an ILEC should be able to use the element as an input into any service requiring that element, the Commission should make clear that requesting carriers are not required to offer every service that uses that element.

[50] *Notice* at ¶ 86; 47 U.S.C. § 251(c)(3).

nondiscriminatory access to network elements on an unbundled basis at any technically feasible point . . . ."[51] By the plain language of the statute, the Commission has no authority to prohibit certain carriers from purchasing unbundled elements, or to restrict the type of service to be provided by the carrier, as long as it is a "telecommunications service" as defined in the Act. Thus, read properly, there should be no question that Section 251(c)(3) permits carriers providing only toll service to purchase unbundled elements to use in their provision of toll service.[52]

[¶ 161] CWI disagrees with the Commission's tentative conclusion that the ILECs' obligation to provide interconnection pursuant to Section 251(c)(2) does not apply to telecommunications carriers requesting interconnection for the purpose of originating or terminating interexchange traffic.[53] Adoption of the Commission's tentative conclusion would mean that IXCs must interconnect at ILEC-designated points and pay inflated access charges for their provision of interexchange service.

[¶ 162] Section 251(c)(2)(A) requires that the *ILEC* provide exchange access or exchange service in conjunction with the provision of interconnection.[54] It does not require that *the interconnection be used by the requesting carrier* to provide a stand-alone access service. If this interpretation were to prevail, carriers could easily form affiliates which

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[51] 47 U.S.C. § 251(c)(3).

[52] *Id.*

[53] *Id.* § 251(c)(2).

[54] *Id.* § 251(c)(2)(A).

would provide exchange access to the affiliated IXC. This scenario, as noted by the Commission, is too easily devised to believe that Congress intended to limit interconnection for only certain services provided by telecommunications carriers. Indeed, the RBOCs' long distance affiliates will most likely "purchase" interconnection from the affiliated ILEC. It seems unlikely that the affiliate will rebuild facilities and reconnect at only the tandem or end office. Rather, it seems likely that the affiliate will take advantage of all points of interconnection ("POIs") currently utilized by the ILEC. Moreover, such a reading of Section 251(c)(2) seems illogical and distorted in light of the fact that the plain language of Section 251(c)(3) permits the purchase of unbundled elements by IXCs for the provision of toll services.[55] The canons of statutory construction preclude a reading of the '96 Act that holds that Congress provided all telecommunications carriers with the ability to purchase unbundled elements for all telecommunications services, but forbade them from interconnecting to the network in order to utilize them for all telecommunications services. This interpretation renders the '96 Act nonsensical.

[¶¶ 159-65] Common sense dictates that these purely regulatory barriers are no longer sustainable. It is rare but not unprecedented, that the regulatory environment drives a complete overhaul of an industry. However, the '96 Act—and the Commission's implementing rules—have the potential to achieve such a restructuring. To meet this challenge, the Commission must "tear down the old walls" in its thinking and refrain from writing into its rules distinctions that can no longer be supported in light of technology and

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[55] *Id.* § 251(c)(2) and (e).

the way in which carriers will actually serve customers. In the past, the regulatory environment categorized carriers based on the particular service being provided, even though a carrier could offer a multitude of services which shared the same technical parameters. Indeed, it is worth remembering that AT&T and the BOCs were one carrier prior to 1984. It is important to recognize, however, that the '96 Act has effectuated an abrupt change in the industry. The '96 Act makes the concept of separate providers of toll, commercial mobile, local, enhanced, international and operator services largely a relic of the past. Sophisticated U.S. customers will—and already are—demanding that carriers provide all of these services and more.

[¶¶ 159-65] In light of this new model, it simply does not make sense for the Commission to perpetuate an artificial distinction between "access" and "interconnection." Indeed, if the Commission examines the PSTN from a purely technical view, it would see that there will be virtually no difference in the way toll calls and local calls originate or terminate when provided by the same carrier. To allow a carrier to "interconnect" (*i.e.*, at an end office) at cost-based rates for the provision of local service, while the same carrier's provision of toll service requires the purchase of "access" service at the same end office at current, above-cost rates is illogical. It's been said before, but—a call is a call.

[¶ 164] It is important to note, however, that this view does not require the Commission to abandon its current access charge regime. Indeed, some carriers may continue to purchase "access" services from the ILECs. However, the statute, as well as an enlightened approach, do not lead to the conclusion that toll providers may be refused interconnection and unbundled elements for the provision of toll service. Moreover, the

provisions of Section 251(g) do not require the Commission to continue its current pricing *structure* for exchange access services.[56] Rather, this Section ensures that the protections afforded in the MFJ and GTE consent decrees, which ensure that the ILECs cannot offer inferior access service or discriminate among access customers, remain firmly in place as a statutory requirement.

[¶ 161] Moreover, nothing in Section 251(i) should lead the Commission to conclude that interexchange carriers may not purchase interconnection under Section 251(c)(2) for use as exchange access. Section 251(i) merely preserves the Commission's authority under Section 201(a), which requires carriers to furnish communication service upon reasonable request and directs carriers, in compliance with Commission rules, to establish physical connections with each other and to establish routes and charges applicable thereto. While the Commission may have found its statutory authority to create the current access charge regime in Section 201, there is nothing in this section of the statute which mandates that carriers purchase interconnection only through the current system. Rather, it is likely that Congress meant to protect the FCC's authority to regulate the physical connection of common carriers (*i.e.*, interconnection), to develop the charges for such interconnection and, importantly, to leave undisturbed the Commission precedent already established under Section 201 for those purposes. In short, CWI believes that the '96 Act is devoid of any mandate to ensure that interexchange carriers be singled out to purchase interconnection under a different pricing methodology than all other carriers.

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[56] *Id.* § 251(g).

[¶¶ 161-64] Put simply, mandating that IXCs obtain interconnection only through the current access charge regime is no longer sustainable in light of the new telecommunications environment. Should the Commission deter prompt reform of this area in this proceeding (which the '96 Act does not support), the Commission should at least clearly enunciate the principle that access and interconnection are analogous, and that toll providers are entitled to interconnection and unbundled elements for the provision of any telecommunications service pursuant to Sections 251(c)(2) and (3), even if not ordering the ILECs to provide the service at this time.[57] Then, the Commission must follow up on its promise to undertake an immediate and thorough review of its Part 69 access charge regime, bringing into parity the technical provision of a type of particular interconnection (regardless of the type of service to be provided) with the cost-based pricing of the interconnection.[58]

H. Pricing Should Be at TSLRIC [¶¶ 117-19, 123-24, 127, 130, 147-48]

[¶¶ 117-19] CWI agrees with the Commission that the establishment of national pricing principles is consistent with the '96 Act and is necessary to further its goals.[59] A national pricing standard will facilitate local competition by reducing or eliminating inconsistent state regulatory requirements, which will, in turn, alleviate recordkeeping and other administrative burdens. Moreover, national pricing guidelines will increase the

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[57] 47 U.S.C. § 251(c)(2) and (3).

[58] *Notice* at ¶ 165.

[59] *Id.* at ¶ 119.

predictability of rates and facilitate negotiation, arbitration and review of agreements between ILECs and competitive providers.

[¶ 123] Accordingly, CWI shares the Commission's view that Congress intended to preclude ". . . states from setting rates by use of traditional cost-of-service regulation, with its detailed examination of historical carrier costs and rate bases."[60] Accordingly, cost-based prices should be forward-looking and set independent of embedded or historical costs. Allowing incumbent carriers to charge for their inflated (and previously recovered) historical costs would be inimical to the '96 Act's goal of promoting local competition. To realize the goal of furthering competition and thereby reduce end-user prices, the Commission must preclude the inclusion of subsidy-laden historical cost figures in the pricing standard.

[¶ 124] Consistent with this analysis, the Commission has correctly concluded that rates set at long run incremental cost ("LRIC") will ". . . give appropriate signals to producers and consumers and ensure efficient entry and utilization of the telecommunications infrastructure."[61] Moreover, the agency's conclusion that rates set at Total Service Long Run Incremental Cost ("TSLRIC") are optimum is entirely consistent with Congress' intent that prices should be set in a forward-looking, pro-competitive manner.[62]

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[60] *Id.* at ¶ 123.

[61] *Id.* at ¶ 124.

[62] *See id.* at ¶¶ 123, 127 (discussing states adopting TSLRIC standard); *see also id.* at ¶ 2 (Congress envisioned a forward-looking regulatory framework).

[¶ 127] As the Commission notes, a number of states have adopted TSLRIC as the basis for setting interconnection rates.[63] The growing consensus on the use of TSLRIC for measuring costs and setting rates can be explained by comparing TSLRIC results to the alternatives. TSLRIC measures all of the costs associated with adding an entire service to a firm's existing array of services. Prices set at TSLRIC will recover all of these costs. Prices based on simple LRIC may not recover all the costs the firm incurs as a result of providing that service. Prices higher than TSLRIC will recover more than the costs a firm incurs as a result of providing the service. Thus, prices set at TSLRIC are optimum — they are not so high that monopoly profits are being earned, and they are not so low that the service provided must be supported through a subsidy.

[¶ 130] TSLRIC pricing also helps prevent anticompetitive conduct by lowering the possibility of predatory or strategic pricing. In adopting TSLRIC pricing, however, the Commission should avoid adding costs, such as a "plus" factor, into its methodology. TSLRIC pricing is consistent with the cost-based standard contained in Section 252(d)(1)(A)(i) of the '96 Act.[64] Adding costs to those already included effectively would revert TSLRIC to a rate-of-return pricing mechanism of the kind explicitly prohibited by Section 252(d)(1)(A)(i).[65]

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[63] *Id.* at ¶¶ 127-28; Ill. Admin. Code, tit. 83 § 791; 1995 Mich. Pub. Acts 216, Sec. 352(1).

[64] 47 U.S.C. § 252(d)(1)(A)(i

[65] *Id.*

[¶¶ 147-48] The Commission rightly points out that the Efficient Component Pricing Rule ("ECPR") has been advocated by ILECs before several state Commissions, but has not been adopted by any of them. Among the problems with this approach is that it effectively allows ILECs to recover non-economic costs from their competitors. This result flows from the fact that ECPR starts from existing revenue requirements. This might be appropriate if existing rates reflected economic costs. However, as discussed above, this is not the case. Therefore, the use of ECPR would safeguard inflated ILEC revenue requirements, compromise the pro-consumer effects of competition and conflict with the letter and spirit of the '96 Act's local competition provisions.

[¶ 130] ILECs may contend that setting the prices for all services at TSLRIC will result in a revenue shortfall. Costs that do not change as a result of adding services — for example, pure economic overhead or other shared costs — are not included in TSLRIC. These costs must be recovered through some allocation to individual services. Such an allocation, however, is essentially arbitrary. Moreover, if a monopoly input supplier is allowed to allocate a disproportionate amount of these costs to its competitors, it will gain an unfair advantage. Therefore CWI supports the adoption of an allocation rule that, insofar as possible, recovers these costs uniformly from all services offered. A disproportionate allocation system — for example, one that assigns overhead and other shared costs strictly to retail services which are purchased for resale by small companies, but not to unbundled network elements utilized by larger competitors — would prove detrimental to the development of local competition.

I. Access to Information and Processing Features Is Essential [¶ 89]

[¶ 89] In addition to proper pricing, technical standards, and the means to select and combine network elements, access to certain information and implementing processes is necessary to provide nondiscriminatory quality of service, order processing, and other necessary terms and implementation elements. Reasonable time-frames for accomplishing these tasks also should be determined.

[¶ 89] In most instances, information, including billing and product training information, and implementing processes essential to the development of a level playing field exist, but have not been designed to serve the needs of new entrants in a competitive environment. The prerequisites for nondiscriminatory access remain in the control of ILECs who have no incentive to make modifications necessary to meet the needs of new entrants. Thus, to ensure that these items are made available to competitors on a uniform and consistent basis, national standards should be developed. Without such uniform guidelines, competing carriers would be forced to contend with the uncertainty of negotiating for each of these elements on a state-by-state basis — which could lead to an operational nightmare as well as an anticompetitive result. To lessen this burden, and to provide guidance to both the negotiating parties and state commissions, the FCC should set national rules that address each of these prerequisites.

[¶ 89] The Commission should establish minimum requirements governing the terms and conditions, technical standards, rates, means to combine elements, information and implementing processes that would apply to the provision of all network elements and that RBOCs would have to meet prior to qualifying for the provision of in-region long distance

service under Section 271.[66] Although many implementation details are best left to the states and to industry forums the Commission should set strict time-frames for implementation and should maintain oversight to ensure that implementation meets minimum requirements. Functional network elements are not service-specific. The unbundled elements should include all the functionalities and features embedded in them, so that they can be used in combinations to provide a full array of competitive services as envisioned by the '96 Act.

IV. RESALE SERVICES SHOULD BE MAXIMIZED [¶¶ 172-77, 196-97]

A. The Importance of Establishing National Resale Rules [¶¶ 177, 196-97]

[¶ 177-197] CWI agrees with the Commission's conclusion that variations in state regulation of resale are detrimental to the development of local competition. Accordingly, CWI supports the establishment of nationally uniform rules for resale. As discussed throughout these comments, uniform rules are key to fulfilling the '96 Act's objective of opening all markets to competition promptly. With regard to resale, national standards are particularly necessary to provide state commissions with guidance for determining in which circumstances, if any, a restriction on resale may be permitted.

B. All ILEC Services Should Be Available for Resale [¶¶ 174-77]

[¶ 172] ILECs are required by the '96 Act "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not

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[66] 47 U.S.C. § 271.

telecommunications carriers."[67] The importance of unrestricted resale cannot be overstated. It is the necessary first step to opening up the local market to competition. Resale is an essential element for competitive carriers seeking to offer nationwide local service. This ability will be an essential part of an integrated, "one stop shopping" package of services which carriers must offer to compete successfully in a vertically integrated competitive marketplace. Resale also is a necessary complement to carriers' effective and efficient use of unbundled network elements It will be decades before most competing carriers can operate locally without some amount of resold ILEC service as part of their service offerings. Finally, resale also will allow certain carriers—those with minimal investment resources, who may not intend to purchase unbundled network elements from an ILEC—quick entry into the local service market[68]

[¶ 172] Accordingly CWI recommends that the Commission explicitly state that ILEC services available for resale should include, but not be limited to:

- measured rate residential telephone service;
- flat rate residential telephone service;
- measured rate business telephone service;
- flat rate business telephone service;
- flat-rated and measured trunk services (including all types of PBX trunks);

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67 47 U.S.C. § 251(c)(4)(A).

68 However, CWI supports the Commission's view that the resale obligation should apply *only* to ILECs. *Notice* at ¶ 174. Section 251(c)(4) of the '96 Act imposes additional obligations on ILECs, with no indication that Congress intended to extend the resale obligation to new entrants.

- Centrex and all feature packages;
- custom calling features (including all CLASS services);
- all promotional offerings;
- optional calling plans;
- special pricing plans;
- calling card;
- directory services
- operator services;
- ISDN BRI and PRI;
- intraLATA toll;
- public access line service;
- semi-public coin telephone service;
- foreign exchange services;
- call blocking services;
- ANI over T1;
- voice messaging;
- video dialtone; and
- any combination of packages offered by the ILEC.

In addition, for each retail ILEC service, the existing databases and signaling that support the service should be provided as part of the wholesale service available to requesting carriers for resale.

[¶ 177] These services should be available in the same form they are offered to the public. *Every* service, including all discounts, promotions, and other offerings, made available to end users, also should be made available to resellers at wholesale rates, as required by the plain language of the '96 Act.[69] A good example what can happen if the Commission does not order all ILEC services to be available for resale is currently occurring in the SNET region. SNET has made *some* of its services available through resale, but is rolling out its resale products one at a time. In the meantime, SNET is making substitute services, which are either not available for resale or not being sold at a discount, more attractive to customers. For example, SNET's Centrex[70] product -- CentraLink -- is available for resale as MultiLink Exchange Service, but not at a discount off its retail rate.[71] SNET has made business lines available for resale at discount rates. However, SNET's CentraLink, which includes several CLASS features, is currently provided below SNET's *combined discount rate* for flat-rated business line service with comparable features. Resale will not reach its potential as an effective method of promoting competition unless the Commission requires that wholesale discounts for resellers apply to every retail service offered by an ILEC and all volume, term, bundling, promotions, and other discounts offered.

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69 47 U.S.C. § 251(c)(4)(A).

70 Centrex is voice grade telephone service, typically offered to multi-line customers at rates which discriminate against single line customers.

71 SNET has told CW that it may be able to make its Centrex product available for resale at a discount later this year.

[¶¶ 172-75] The services made available for resale must not be "second rate" services.[72] Consequently, the Commission must ensure that ILECs offer resellers the same quality service they provide to themselves and their own retail customers. In order to accomplish this, ILECs must install systems and procedures which permit the efficient ordering and use of wholesale facilities, in much the same way as they had to modify their switches when implementing interLATA equal access. These systems must provide at a minimum:

- *Pre-Service Ordering Capabilities*. The ability to access all information necessary to verify the availability of service and features; scheduling information for service installation; and number administration systems for number assignment.
- *Service Ordering/Initiation Capabilities*. On-line and fully automated processes that permit order and service initiation for customers.
- *Daily Usage on a Line-Specific Basis*. LECs must provide exchange of billing data and exchange of customer account data. This must be done pursuant to confidentiality procedures.
- *On-Line Monitoring Capabilities*. LECs must provide on-line systems for monitoring, performance tests, repair scheduling and troubleshooting.

[¶¶ 175-77] CWI also endorses the Commission's view that since resale "restrictions and conditions are likely to be evidence of an exercise of market power, . . . the range of permissible restrictions should be quite narrow."[73] Any attempt to restrict resale should be subjected to close scrutiny. It would be an unreasonable restriction on resale, for example, for ILECs to require resellers to impose on the reseller's customers the same volume

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72 47 U.S.C. § 251(c) 4).

73 *Notice* at ¶ 175.

requirements that apply to the resellers and the ILEC's other customers. This would preclude arbitrage and impose an anticompetitive restriction on resale. Moreover, there are strong public policy reasons why the Commission should not allow ILECs to require a reseller or its customers to comply with additional restrictions which may apply to a particular ILEC's customers. For example, limiting a reseller that purchases a promoted service at wholesale rates to the time limitation of the ILEC's promotion would permit an ILEC to use promotions as anticompetitive, predatory pricing devices (the ILEC would be able to offer promotions priced below incremental cost, which strategically could be timed to coincide with the entry of a reseller). Although predatory prices cannot be sustained indefinitely, by being able to limit the promotion to a discrete time period, and apply that limitation to its competitors, an ILEC would be able to effectively engage in predatory pricing. This concern can easily become reality when the reseller relies on an ILEC who is its competitor as well as its provider. Because the reseller must notify the ILEC of its business plans well in advance of actually providing resold service, the ILEC can easily engage in discriminatory practices.

[¶ 175] CWI also contends that withdrawing a service may be a means of discrimination and an unreasonable restriction on resale.[74] Withdrawing a service offering to avoid having to offer it for resale is explicitly prohibited by Section 251(c)(4)(B) of the '96 Act. 47 U.S.C. § 251(c)(4)(B). Resale functions as a competitive device by limiting the ability of a firm with market power to segregate market niches and engage in price

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[74] *See Notice* at § 175.